

BILLIE L. EMRICK

IBLA 83-698

Decided January 27, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. W-84911.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases:  
First-Qualified Applicant

Failure of an applicant to date a simultaneous oil and gas lease application in accordance with 43 CFR 3112.2-1(c) (1982) does not require rejection of the application.

APPEARANCES: Charles E. Black, Esq., Mount Ida, Arkansas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Billie L. Emrick has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 18, 1983, rejecting her simultaneous oil and gas lease application, W-84911.

Appellant's lease application was drawn with first priority for parcel WY-194 in the March 1983 simultaneous oil and gas lease drawing. In its May 1983 decision, BLM rejected appellant's application because it was undated and, therefore, did not reflect that it was signed within the March 1983 filing period, in accordance with 43 CFR 3112.2-1(c) (1982).

In her statement of reasons for appeal, appellant contends that the fact that a certified check, in payment of the application filing fees and attached to her lease application form, was dated March 11, 1983, "a week before expiration of the filing period, plus the fact that the dated check was accepted, cashed, and cleared the bank, should constitute sufficient compliance with the application requirements."

[1] The applicable regulation, 43 CFR 3112.2-1(c) (1982), provides, in relevant part, with respect to simultaneous oil and gas lease applications: "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period." This Board has consistently required strict compliance with the regulations governing simultaneous oil and gas lease filings, 43 CFR Subpart 3112, in order to protect the rights of the second- and third-drawn applicants. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Accordingly, we have held that

BLM must reject a simultaneous oil and gas lease application pursuant to 43 CFR 3112.6-1(a) (1982) where the application is not dated in the space provided on the application form. Warren W. Nissley, 73 IBLA 234 (1983); Lynn C. Haas, 62 IBLA 25 (1982).

However, in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), the Tenth Circuit reversed the Federal District Court's decision in Conway v. Watt, No. C82-0029 (D. Wyo. July 12, 1982), which had affirmed the Board's decision in Joe Conway, 59 IBLA 314 (1981). This Board had held in Conway that failure to date a simultaneous oil and gas lease application required rejection of the application.

The appeals court stated in Conway:

Although offers to lease must strictly comply with the Secretary's regulations, this court has consistently intimated that nonsubstantive errors are inappropriate grounds for finding DEC [drawing entry card] applications defective. Ahrens v. Andrus, [690 F.2d 805 (10th Cir. 1982)] at 808; Winkler v. Andrus, 594 F.2d 775, 777-78 (10th Cir. 1979). \* \* \*

Inasmuch as the great weight of judicial authority places little or no emphasis on the absence of a date, Conway's failure to date his DEC would indeed appear to be a de minimis, a nonsubstantive error.

717 F.2d at 516. Thus, the court concluded that although a date could be required, the failure to date could not be a per se disqualification.

Accordingly, under the Conway decision appellant's failure to date her application must be considered a nonsubstantive error for which automatic rejection of the application would be inappropriate.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded.

Gail M. Frazier  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Bruce R. Harris  
Administrative Judge

